

AMENDED IN SENATE JULY 23, 2009

AMENDED IN SENATE JUNE 23, 2009

AMENDED IN SENATE JUNE 10, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 45

Introduced by Assembly Member Blakeslee

December 1, 2008

An act to add and repeal Article 2.11 (commencing with Section 65893) of, and to repeal the heading of Article 2.11 (commencing with Section 65892.13) of, Chapter 4 of Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 45, as amended, Blakeslee. Distributed generation: small wind energy systems.

The California Renewables Portfolio Standard Program requires that an electrical corporation, as defined, procure a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard), subject to specified limits. The renewables portfolio standard requires each retail seller to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

This bill would authorize a local agency to ~~provide, by ordinance, adopt an ordinance that provides~~ for the installation of small wind energy systems, ~~as specified outside an urbanized area, but within the local agency's jurisdiction,~~ and to establish a process for the issuance of conditional use permits for these systems, *subject to specified conditions*. The bill would also authorize a local agency to impose conditions on the installation of these systems, but would prohibit the local agency from imposing conditions relating to specified aspects of these systems that are more restrictive than certain specified requirements of, and conditions upon, these systems.

This bill would ~~require~~ *authorize* a local agency that has not adopted an ordinance providing for the installation of these systems, ~~and receives an application for the installation of a small wind energy system after July within its jurisdiction by January 1, 2010, 2011, but before it adopts an ordinance providing for the installation of these systems, to approve the application through a ministerial permit to adopt an ordinance providing for the installation of these systems within its jurisdiction at a later date, but would require that ordinance, when adopted, to be in accordance with a specified provision of law.~~ The bill would specifically exempt ordinances approved prior to ~~July~~ January 1, 2010, 2011, from the provisions of this article. *The bill would require a local agency to approve an application for the installation of one of these systems submitted between January 1, 2011, and the date of the local agency's adoption of an ordinance that meets specified requirements through the issuance of a ministerial permit that meets specified requirements, if the local agency establishes a process for the issuance of conditional use permits for small wind energy systems.*

This bill would authorize a local agency to ~~require~~ *impose* as a condition of approval *a requirement* that a small wind energy system be removed if it remains inoperable for 12 consecutive months, and the small wind energy system, at that time, would be subject to nuisance codes and code enforcement action. ~~The~~ *The bill would specify that nothing in this article interferes with or prevents the exercise of authority by a public agency to carry out its programs, projects, or responsibilities, or affects the requirements imposed under any other provision of law.*

The bill would declare that it is the policy of the state to promote and encourage the use of distributed renewable energy systems and to limit obstacles to their use.

The bill would require the State Energy Resources Conservation and Development Commission to submit, on or before January 1, 2016, to the Assembly and Senate Committees on Local Government, a report containing specified information, including the number of applications for small wind energy systems received and approved by local agencies on or after ~~July 1, 2010~~ *January 1, 2011*.

This bill would provide that its provisions would be repealed on January 1, 2017.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Article 2.11 (commencing with
2 Section 65892.13) of Chapter 4 of Division 1 of Title 7 of the
3 Government Code is repealed.

4 SEC. 2. Article 2.11 (commencing with Section 65893) is
5 added to Chapter 4 of Division 1 of Title 7 of the Government
6 Code, to read:

7
8 Article 2.11. Wind Energy
9

10 65893. (a) The Legislature finds and declares all of the
11 following:

12 (1) Wind energy is an abundant, renewable, and nonpolluting
13 energy resource.

14 (2) Wind energy, when converted to electricity, reduces our
15 dependence on nonrenewable energy resources, reduces air and
16 water pollution that result from conventional sources burning fossil
17 fuels, and reduces emissions of greenhouse gases.

18 (3) Distributed generation small wind energy systems also
19 enhance the reliability and quality of electricity delivered by the
20 electrical grid, reduce peak power demands, increase in-state
21 electricity generation, diversify the state's energy supply portfolio,
22 and make the electricity supply market more competitive by
23 promoting consumer choice.

24 (4) Small wind energy systems designed for onsite home, farm,
25 and small commercial use are recognized by the Legislature and
26 the ~~Energy Commission~~ *State Energy Resources Conservation*
27 *and Development Commission* as an excellent technology to help

1 achieve the goals of increased in-state electricity generation,
2 reduced demand on the state electrical grid, increased consumer
3 energy independence, and nonpolluting electricity generation.

4 (5) It is the intent of the Legislature to encourage local agencies
5 to support the state's ambitious renewable energy procurement
6 requirements by developing and adopting ordinances that facilitate
7 the installation of small wind energy systems and do not
8 unreasonably restrict the ability of homeowners, farms, and small
9 businesses to install small wind energy systems in zones in which
10 they are authorized by local ordinance.

11 (6) It is the intent of the Legislature to facilitate the
12 implementation of consistent statewide standards to achieve the
13 timely and cost-effective installation of small wind energy systems.

14 65894. For purposes of this article, the following terms shall
15 have the following meanings:

16 (1) "Energy Commission" means the State Energy Resources
17 Conservation and Development Commission.

18 (2) "Small wind energy system" means a wind energy
19 conversion system consisting of a wind turbine, a tower, and
20 associated control or conversion electronics that has a rated
21 capacity of not more than 50 kilowatts per customer site, consistent
22 with the requirements of paragraph (3) of subdivision (b) of Section
23 25744 of the Public Resources Code, and that will be used
24 primarily to reduce onsite consumption of utility power.

25 (3) "System height" means the higher of either the height of the
26 tower and the system measured to the top of the blade at the 12
27 o'clock position or the highest point of the system extended above
28 the existing grade when being operated.

29 (4) "Tower height" means the height above grade of the fixed
30 portion of the tower, excluding the wind turbine.

31 (5) "Urbanized area" has the same meaning as set forth in
32 Section 65944.

33 65895. (a) A local agency that has not adopted an ordinance
34 providing for the installation of small wind energy systems located
35 outside an urbanized area, but within the local agency's
36 jurisdiction, by ~~July 10, 2010~~ *January 1, 2011*, may adopt such an
37 ordinance at a later date, but the ordinance shall be in accordance
38 with Section 65896. Ordinances adopted prior to ~~July 1, 2010~~
39 *January 1, 2011*, are exempt from this article.

1 (b) A local agency may establish a process for the issuance of
2 conditional use permits for small wind energy systems *located*
3 *outside an urbanized area*, subject to all of the following
4 conditions:

5 (1) A local agency shall review an application for a small wind
6 energy system pursuant to the timelines established in the Permit
7 Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

8 (2) Fees charged by a local agency to review an application for
9 a small wind energy system shall be determined in accordance
10 with Sections 66014 and 66016.

11 (3) An application for the installation of a small wind energy
12 system submitted between ~~July 1, 2010~~ *January 1, 2011*, and the
13 date of the local agency's adoption of an ordinance that meets the
14 requirements and conditions of subdivision (b) of Section 65896
15 shall be approved through a ministerial permit by the local agency
16 *meeting the requirements and conditions of subdivision (b) of*
17 *Section 65896*.

18 65896. (a) A local agency may ~~by ordinance, provide~~ *adopt*
19 *an ordinance that provides* for the installation of small wind energy
20 systems outside an urbanized area, but within the local agency's
21 jurisdiction.

22 (b) The ordinance may impose conditions on the installation of
23 small wind energy systems that include, but are not limited to,
24 notice, tower height, setback, view protection, aesthetics, aviation,
25 and design-safety requirements. However, the ordinance shall not
26 require conditions on notice, tower height, setback, noise level,
27 visual effects, turbine approval, tower drawings, and engineering
28 analysis, or line drawings that are more restrictive than the
29 following requirements and conditions:

30 (1) The parcel where the system is located shall be at least one
31 acre in size and located outside an urbanized area.

32 (2) Tower heights of not more than 80 feet shall be allowed on
33 parcels between one and five acres. Tower heights of not more
34 than 100 feet shall be allowed on parcels above five acres. All
35 tower heights shall not exceed the applicable limits established by
36 the Federal Aviation Administration. An application shall include
37 evidence that the proposed height of a tower does not exceed the
38 height recommended by the manufacturer or distributor of the
39 system.

1 (3) ~~Setbacks~~ *Minimum setbacks* for the system tower shall be
2 no farther from the property line than the system height, ~~provided~~
3 ~~the system also complies unless a greater setback is needed to~~
4 *comply* with applicable fire setback requirements set forth in
5 Section 4290 of the Public Resources Code.

6 (4) Decibel levels for the system shall not exceed the lesser of
7 60 decibels (dBA), or any existing maximum noise levels applied
8 pursuant to the noise element of a general plan for the applicable
9 zoning classification in a jurisdiction, as measured at the nearest
10 property line, except during short-term events, such as utility
11 outages and severe windstorms.

12 (5) Notice of an application for installation of a small wind
13 energy system shall be provided to property owners within 300
14 feet of the property on which the system is to be located, *except*
15 *that the local agency may, if it deems it necessary due to*
16 *circumstances specific to the proposed installation, require the*
17 *applicant to provide notice by placing a display advertisement of*
18 *at least one-eighth of a page in at least one newspaper of general*
19 *circulation within the local agency in which the installation is*
20 *proposed.*

21 (6) The system shall not substantially obstruct views of adjacent
22 property owners and shall be placed or constructed below any
23 major ridgeline when visible from any scenic highway corridor
24 designated pursuant to Article 2.5 (commencing with Section 260)
25 of Chapter 2 of Division 1 of the Streets and Highways Code or
26 any scenic highway corridor designated by a local agency *in its*
27 *general plan.*

28 (7) The system shall use a wind turbine that has been approved
29 by the Energy Commission as qualifying under its Emerging
30 Renewables Program pursuant to Section 25744 of the Public
31 Resources Code or has been certified by a national program
32 recognized and approved by the commission.

33 (8) The application shall include standard drawings and an
34 engineering analysis of the system's tower, showing compliance
35 with the current version of the California Building Standards Code
36 and certification by a professional mechanical, structural, or civil
37 engineer licensed by this state. A wet stamp, however, shall not
38 be required if the application demonstrates that the system is
39 designed to meet the most stringent wind requirements (Uniform
40 Building Code wind exposure D), the requirements for the worst

1 seismic class (Seismic 4), and the weakest soil class, with a soil
2 strength of not more than 1,000 pounds per square foot, or other
3 relevant conditions normally required by a local agency.

4 (9) The system shall comply with all applicable Federal Aviation
5 Administration requirements, including Subpart B (commencing
6 with Section 77.11) of Part 77 of Title 14 of the Code of Federal
7 Regulations regarding installations close to airports, and the State
8 Aeronautics Act (Part 1 (commencing with Section 21001) of
9 Division 9 of the Public Utilities Code). A system that complies
10 with this subdivision shall be deemed to meet the applicable health
11 and safety requirements regarding civil aviation.

12 (10) The application shall include a line drawing of the electrical
13 components of the system in sufficient detail to allow for a
14 determination that the manner of installation conforms to the
15 National Electric Code.

16 (11) If required by the local agency, the applicant shall provide
17 information demonstrating the system will be used primarily to
18 reduce onsite consumption of electricity. The local agency may
19 also require the application to include evidence, unless the applicant
20 does not plan to connect the system to the electricity grid, that the
21 electric utility service provider that serves the proposed site has
22 been informed of the applicant's intent to install an interconnected
23 customer-owned electricity generator.

24 (12) If a local agency receives an application ~~in~~ to install a small
25 wind energy system on a site that is within 1,000 feet of a military
26 installation, ~~or within special use airspace~~ *within special use*
27 *airspace*, or beneath a low-level flight path as defined by Section
28 21098 of the Public Resources Code, then the local agency shall
29 promptly comply with Section 65944. If the governing authority
30 of any military installation, special use airspace, or low-level flight
31 path provides written comments regarding that application, the
32 local agency shall consider those comments before acting on the
33 application.

34 (13) If a small wind energy system is proposed to be sited in an
35 agricultural area that may have aircraft operating at low altitudes,
36 the local agency shall take reasonable steps, concurrent with other
37 notices issued pursuant to this subdivision, to notify pest control
38 aircraft pilots registered to operate in the county pursuant to Section
39 11921 of the Food and Agricultural Code.

1 (14) Tower structure lighting shall be prohibited unless
2 otherwise required by another provision of law or pursuant to
3 paragraph (13).

4 (15) No climbing apparatus attached to the system shall be
5 located less than 12 feet above the ground, and the system shall
6 be designed to prevent climbing within the first 12 feet.

7 (16) No sign shall be attached to the system if visible from a
8 public road, except for ~~manufacturer or installer identification~~
9 ~~signs, owner identification signs, or public health and safety signs~~
10 ~~applicable to the installed system, but in no case shall the signs be~~
11 ~~larger than four square feet and located at the base of the system~~
12 ~~within 10 feet of the ground surface unless approved by the city~~
13 ~~or county. signs that identify the manufacturer, installer, or owner~~
14 ~~of the system, or public health and safety signs applicable to the~~
15 ~~installed system, but the signs shall neither be larger than four~~
16 ~~square feet, unless approved by the city or county, nor located at~~
17 ~~the base of the system within 10 feet of the ground surface.~~

18 (17) A small wind energy system shall not be allowed where
19 otherwise prohibited by any of the following:

20 (A) A local coastal program and any implementing regulations
21 adopted pursuant to the California Coastal Act (Division 20
22 (commencing with Section 30000) of the Public Resources Code).

23 (B) The California Coastal Commission, pursuant to the
24 California Coastal Act (Division 20 (commencing with Section
25 30000) of the Public Resources Code).

26 (C) The regional plan and any implementing regulations adopted
27 by the Tahoe Regional Planning Agency pursuant to the Tahoe
28 Regional Planning Compact (Title 7.4 (commencing with Section
29 66800)).

30 (D) The San Francisco Bay Plan and any implementing
31 regulations adopted by the San Francisco Bay Conservation and
32 Development Commission pursuant to the McAteer-Petris Act
33 (Title 7.2 (commencing with Section 66600)).

34 (E) A comprehensive land use plan and any implementing
35 regulations adopted by an airport land use commission pursuant
36 to Article 3.5 (commencing with Section 21670) of Chapter 4 of
37 Division 9 of Part 1 of the Public Utilities Code.

38 (F) The Alquist-Priolo Earthquake Fault Zoning Act (Chapter
39 7.5 (commencing with Section 2621) of Division 2 of the Public
40 Resources Code).

1 (G) A local ~~agency ordinance~~ *ordinance* to protect the scenic appearance
2 of the scenic highway corridor designated pursuant to Article 2.5
3 (commencing with Section 260) of Chapter 2 of Division 1 of the
4 Streets and Highways Code or pursuant to scenic highways
5 designated in the local general plan.

6 (H) The terms of a conservation easement entered into pursuant
7 to Chapter 4 (commencing with Section 815) of Division 2 of Part
8 2 of the Civil Code.

9 (I) The terms of an open-space easement entered into pursuant
10 to the Open-Space Easement Act of 1974 (Chapter 6.6
11 (commencing with Section 51070) of Division 1 of Title 5).

12 (J) The terms of an agricultural conservation easement entered
13 into pursuant to the California Farmland Conservancy Program
14 Act (Division 10.2 (commencing with Section 10200) of the Public
15 Resources Code).

16 (K) The terms of a contract entered into pursuant to the
17 Williamson Act (Chapter 7 (commencing with Section 51200) of
18 Division 1 of Title 5).

19 (L) The listing of the proposed site in the National Register of
20 Historic Places or the California Register of Historical Resources
21 pursuant to Section 5024.1 of the Public Resources Code.

22 ~~(e) A local agency may, if it deems it necessary due to~~
23 ~~circumstances specific to the proposed installation, provide notice~~
24 ~~by placing a display advertisement of at least one-eighth of a page~~
25 ~~in at least one newspaper of general circulation within the local~~
26 ~~agency in which the installation is proposed.~~

27 ~~(d) A local agency may require as a condition of approval that~~

28 *(c) A local agency may impose, as a condition of approval, a*
29 *requirement that a small wind energy system be removed if it*
30 *remains inoperable for 12 consecutive months, and at that time*
31 *the small wind energy system shall be subject to nuisance codes*
32 *and code enforcement action.*

33 *(d) (1) Nothing in this article interferes with or prevents the*
34 *exercise of authority by a public agency to carry out its programs,*
35 *projects, or responsibilities.*

36 *(2) Nothing in this article affects requirements imposed under*
37 *any other law.*

38 65897. It is the policy of the state to promote and encourage
39 the use of distributed renewable energy systems and to limit
40 obstacles to their use, and it is the intent of the Legislature that

1 local agencies encourage the installation of distributed renewable
2 energy systems by removing obstacles to, and minimizing costs
3 of, permitting distributed renewable energy systems.

4 65898. On or before January 1, 2016, the State Energy
5 Resources Conservation and Development Commission shall
6 submit to the Assembly Committee on Local Government and the
7 Senate Committee on Local Government a report that contains all
8 of the following:

9 (a) The number of ordinances adopted on or after ~~July 1, 2010~~
10 *January 1, 2011*, by local agencies pursuant to Section 65895.

11 (b) The number of applications to install small wind energy
12 systems received by local agencies on or after ~~July 1, 2010~~ *January*
13 *1, 2011*.

14 (c) The number of applications to install small wind energy
15 systems approved by local agencies on or after ~~July 1, 2010~~
16 *January 1, 2011*.

17 (d) The tower heights, system heights, parcel sizes, and
18 generating capacities of the small wind energy systems approved
19 by local agencies on or after ~~July 1, 2010~~ *January 1, 2011*.

20 (e) Any recommendations to the Legislature by the State Energy
21 Resources Conservation and Development Commission for the
22 continuation, modification, or termination of this article.

23 65899. This article shall remain in effect only until January 1,
24 2017, and as of that date is repealed, unless a later enacted statute,
25 that is enacted before January 1, 2017, deletes or extends that date.